

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DIOGENES LIMITED and	)	
COLOSSUS (IOM) LIMITED,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 21-1695-MN-CJB
v.	)	
	)	
DRAFTKINGS, INC.,	)	
	)	
Defendant.	)	

**STIPULATION AND [PROPOSED] CASE NARROWING ORDER**

WHEREAS, Plaintiffs Diogenes Limited and Colossus (IOM) Limited (“Plaintiffs”) and Defendant DraftKings, Inc. (“Defendant”) (collectively, the “Parties”) previously agreed to dates for a first and second election of asserted claims (Plaintiffs) and prior art references and prior art combinations (Defendant), which were ordered by this Court by its entry of the Scheduling Order (D.I. 25); and

WHEREAS, the Court ordered that the Parties confer on a case narrowing proposal on or before April 18, 2022 (D.I. 23), and the Court subsequently extended this date to April 21, 2022 (D.I. 31);

WHEREAS, the Parties have subsequently conferred and agree to the below parameters, subject to the Court’s approval;

IT IS HEREBY ORDERED that:

1. By Plaintiffs’ first election of asserted claims (September 2, 2022) (*see* D.I. 25 ¶ 7(e)), Plaintiffs will narrow their infringement case to no more than 72 total asserted claims (with no more than 17 claims from any single patent).

2. By Defendant's first election of prior art references and prior art arguments (September 16, 2022, *see id.*), Defendant will narrow its invalidity case to no more than 108 prior art references in total and no more than 162 prior art grounds (with no more than 26 references and 39 grounds asserted against any single patent).

3. By Plaintiffs' second election of asserted claims (April 3, 2024, *see id.*), Plaintiffs will narrow their infringement case to no more than 32 total asserted claims.

4. By Defendant's second election of prior art references and prior art arguments (April 10, 2024, *see id.*), Defendant will narrow its invalidity case to no more than 40 prior art references and 60 prior art grounds.

5. Neither party may assert claims or prior art references or combinations via the second election that were not previously elected without good cause.

6. For the avoidance of doubt, a combination of prior art references (*e.g.*, A and B), regardless of how many claims it is applied against, counts as a single "ground." Moreover, combinations that are listed as "and/or" alternatives shall constitute as many grounds as can be formed based on what is stated, such that a combination that lists "A and/or B and/or C" shall count as four prior art grounds: "A and B," "A and C," "B and C," and "A, B, and C."

7. Where Defendant relies on a prior art product or use, it shall count as one prior art reference for counting purposes although it may be shown by more than one piece of evidence. Where a prior art product or use is elected by Defendant on the above schedule, Defendant will concurrently disclose all supporting evidence then known to Defendant. Defendant will identify all of its evidence upon which it intends to rely to demonstrate a prior art product or use by June 29, 2023 (the deadline for supplementation of invalidity references, *see* D.I. 25 at ¶ 16).

8. Defendant will identify all of its background or state-of-the-art references (any particular references that are not relied on in its contentions to show the existence of a claim limitation in the prior art) by June 29, 2023 (the deadline for supplementation of invalidity references, *see id.*), and provide notice of their intended use in its final invalidity contentions (October 5, 2023, *see id.*).

9. The parties may seek to modify the limits in the above-referenced schedule in the future upon a showing of good cause.

DATE: April 21, 2022

**DLA PIPER LLP (US)**

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

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IT IS SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_ 2022.

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UNITED STATES DISTRICT JUDGE